

## DEPARTMENT OF FINANCE BILL ANALYSIS

**AMENDMENT DATE:** March 31, 2009  
**POSITION:** Oppose  
**SPONSOR:** The California-Nevada Conference of Operating Engineers

**BILL NUMBER:** SB 240  
**AUTHOR:** R. Wright

### **BILL SUMMARY:** Vehicles: Department of Transportation Vehicles

This bill would make permanent the existing law, which requires motorists until January 1, 2010, to slow down and, when necessary move out of an adjacent lane when passing a stationary authorized emergency vehicle and tow truck displaying flashing amber warning lights. In addition, this bill would expand the law to include stationary marked Department of Transportation (Caltrans) vehicles. However, this bill would prohibit a Caltrans vehicle from displaying flashing amber warning lights on a freeway except when an unusual traffic hazard or extreme hazard exists.

### **FISCAL SUMMARY**

By limiting Caltrans' use of flashing amber warning lights to situations where an unusual or extreme hazard exists, this bill could significantly increase Caltrans' tort liability exposure. While it is unknown how many additional lawsuits this bill could invite, Caltrans reports that it is reasonable to assume that the volume of litigation would increase significantly due to the creation of a new avenue by which Caltrans could be sued, resulting in additional costs to the state.

A violation of this provision would be punishable by a fine of up to \$50, the same as currently imposed on violators of existing law with regards to other emergency vehicles. Revenues from base fines are received through the court system and go to the county where the violation takes place.

Although flagged as a mandate by Legislative Counsel, the mandate should not be reimbursable because it changes the definition of an existing crime.

### **COMMENTS**

The Department of Finance is opposed to this bill because it could increase liability issues and could actually weaken protections currently in place for Caltrans workers. Due to liability concerns, it may be necessary for Caltrans to close roads or lanes more frequently rather than rely on warning lights for worker protection.

Caltrans' departmental policy, its maintenance manual, provides employees with discretion to determine appropriate use of flashing amber warning lights when working in the field. However, because this bill would limit the use of amber warning lights to when an unusual or extreme hazard exists, Caltrans reports that this could complicate the decisions made by its employees by forcing them to choose between the safest course of action in certain situations and compliance with the statute. In many cases activating the amber lights may be the safest course of action, yet would be contrary to statute if an "unusual or extreme hazard" did not exist.

Caltrans has reported concerns with this bill because it would create a new avenue by which Caltrans could be sued. For example, this provision would transform every situation in which an employee activates amber warning lights into an implicit admission that Caltrans was aware of an "extreme or unusual hazard" that

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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

<b>BILL ANALYSIS</b>	Form DF-43 (Rev 03/95 Buff)
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## AUTHOR

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existed on the roadway. This could compromise Caltrans ability to defend against certain lawsuits. In addition, Caltrans reports that this provision could produce a new legal standard in “dangerous condition of public property” cases in which a plaintiff could claim that the activation of the lights was improper because no extreme hazard existed, and could insist that the activation of the lights itself created a dangerous situation. Any incident involving a Caltrans vehicle or occurring in close proximity to a Caltrans vehicle would be highly scrutinized to determine if the worker’s action of either activating or not activating its amber lights was legal.

Current law requires a motorist on a freeway to approach with due caution when passing a stationary authorized emergency vehicle or tow truck that is displaying emergency lights. Absent other direction from a peace officer, a motorist is required to slow down and, when possible, move out of a lane adjacent to the authorized emergency vehicle or tow truck. Existing law required the California Highway Patrol (CHP) to report to the Legislature by January 1, 2009, on the law's effect on the safety of emergency personnel and the travelling public. In its report, the CHP concluded that while there is no absolute measurement to determine the impacts of the "move-over" law on increasing safety, the new laws appeared to have had a positive effect by reducing collisions and injuries involving stopped emergency vehicles and tow trucks between 2006 and 2007.

		SO	(Fiscal Impact by Fiscal Year)							
Code/Department		LA	(Dollars in Thousands)							
Agency or Revenue		CO	PROP							
Type		RV	98	FC	2008-2009	FC	2009-2010	FC	2010-2011	Fund Code
2660/Caltrans		SO	No		-----	See Fiscal Summary	-----			0042
<u>Fund Code</u>	<u>Title</u>									
0042	Highway Account, State, STF									